

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID W. DINGLE,

Plaintiff,

v.

GREGORY C. TESLUK, et al.,

Defendants.

No. 2:20-cv-1878 JAM DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims defendants violated his rights under the Eighth Amendment.

By order dated November 5, 2020 the court screened the complaint. (ECF No. 7.) It found plaintiff's allegations failed to state a claim. The complaint was dismissed with sixty days leave to amend. On January 27, 2021, the undersigned issued findings and recommendations recommending that this action be dismissed for failure to file an amended complaint. (ECF No. 11.) Thereafter, plaintiff filed objections stating that a fellow inmate has been assisting him with this case, that inmate has all the materials related to this action, and that he cannot meet with that inmate because inmate movement is restricted due to the COVID-19 pandemic. (ECF No. 12.) He requested a "postpone[ment] of these proceedings until after the coronavirus threat and [the prison is] back to a normal program."

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1 The court declined to grant a stay, but vacated the January 27, 2021 findings and  
2 recommendations and granted plaintiff an additional 60 days to file an amended complaint. (ECF  
3 No. 13.) After the time for filing an amended complaint again expired, the court issued an order  
4 to show cause directing plaintiff to file an amended complaint or dismiss this action within thirty  
5 days. (ECF No. 15.) Those thirty days have passed, and plaintiff has not filed an amended  
6 complaint, requested additional time to file an amended complaint, or otherwise responded to the  
7 court's order. Accordingly, the court will recommend that this action be dismissed for failure to  
8 prosecute and failure to comply with court orders.

9 For the reasons set forth above, IT IS HEREBY RECOMMENDED that this action be  
10 dismissed without prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
13 after being served with these findings and recommendations, plaintiff may file written objections  
14 with the court and serve a copy on all parties. Such a document should be captioned "Objections  
15 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
16 objections within the specified time may waive the right to appeal the District Court's order.  
17 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: August 16, 2021

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22 DEBORAH BARNES  
23 UNITED STATES MAGISTRATE JUDGE  
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27 DB:12  
28 DB/DB Prisoner Inbox/Civil Rights/R/ding1878.f&r.dism